

State of California Board of Optometry

Disciplinary Guidelines

and Model Disciplinary Orders

(May 1999)

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the Board of Optometry has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by administrative law judges, attorneys, optometrists and ultimately the board, shall be revised from time to time following public hearing by the board and will be disseminated to interested parties upon request.

This document is divided into three sections as follows: (1) Disciplinary guidelines for specific violations of the Optometry Practice Act and other related laws; (2) model language for use in crafting disciplinary orders; and (3) guidelines for the imposition and assessment of administrative fines and citations. The board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate variations in individual cases.

Additional copies of this document may be obtained by contacting the Board of Optometry at its offices in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies.

Disciplinary Guidelines

The board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the board would request that the Administrative Law Judge hearing the matter include some statement of this in the Proposed Decision so that the circumstances can be better understood and evaluated by the board upon review of the proposed decision and before its ultimate action is taken.

For purposes of this document terms and conditions of probation are divided into two general categories: (1) General Conditions which are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and (2) Specific Conditions which are those that address the specific circumstances of the case and require discretion to be imposed depending on the nature and circumstances of a particular case. B&P refers to the California Business and Professions Code. CCR refers to the California Code of Regulations

General Probationary Conditions

The five standard conditions of probation generally appearing in every case are as follows:

1. Obey all laws [26]
2. Cooperate with probation surveillance [27]
3. Tolling of probation if respondent moves out-of-state [28]
4. Completion of probation [29]
5. Violation of probation [30]

Specific Probationary Conditions

Excessive Prescribing (B&P Code sec. 725).

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Maintain records of prescription for review [10]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Education course [14]
5. If warranted, Community service [13]

Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16

CCR sec. 1565)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Maintain records of prescription for review [10]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Education course [14]

5. If warranted, Community service [13]

Excessive Treatments (B&P Code sec. 725)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education Course [14]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Monitoring [20]
4. If warranted, Restrict practice [22]

Sexual Misconduct (B&P Code sec. 726)

Minimum Penalty: Stayed Revocation, at least 7 years probation

Maximum Penalty: Revocation

1. Psychiatric or psychological evaluation [16][17]
2. Education course [14]
3. Require third party present [21]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Mental or Physical Fitness (B&P Code sec. 820; 3097)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. If warranted, Restrict practice [22]
2. If warranted, Monitoring [20]
3. If warranted, Psychiatric or psychological evaluation [16][17]
4. If warranted, Medical evaluation [18][19]

Gross Negligence & Inefficiency (B&P Code sec. 3090; Title 16 CCR sec. 1510)

Failure to Refer Patient (B&P Code sec. 3109)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Ophthalmic Devices, Violation of Quality Standards (B&P Code sec. 2541.3; Title 16 CCR sec.

1519)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Violation of Sanitary Standards (B&P Code sec. 3025.5; Title 16 CCR sec. 1520)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec.

1560; 1561; 1562; 1563)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Education course [14]
3. If warranted, Restrict practice [22]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]

Unprofessional Conduct. Dishonesty and Fraud (B&P Code sec. 810; 3090; 3101; 3126; 3127)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]
2. If warranted, Suspension of 30 days or more [7]
3. If warranted, Community service [13]

Practice During Suspension (B&P Code sec. 3127)

1. Revocation

Alcohol Abuse (B&P Code sec. 820)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Reexamination [15]
2. Abstain from drugs [8, 9]
3. Biological fluid testing [12]
4. Drug or Alcohol Counseling and Treatment [23]
5. If warranted, Suspension of 30 days or more [7]

6. If warranted, Monitoring [20]
7. If warranted, Restrict practice [22]

Alcohol Abuse (B&P Code sec. 3105; 3105.1)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Re-examination [15]
2. Abstain from Alcohol [11]
3. Biological fluid testing [12]
4. Drug or Alcohol Counseling and Treatment [23]
3. If warranted, Suspension of 30 days or more [7]
6. If warranted, Monitoring [20]
7. If warranted, Restrict practice [22]

Aiding and Abetting Unlicensed Practice (B&P Code sec. 3102; 3106)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Restrict number of branch offices [24]
4. If warranted, Suspension of 30 days or more [7]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Acceptance of Unlawful Employment (B&P Code sec. 3103)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Reexamination [15]

3. If warranted, Suspension of 30 days or more [7]

Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Reexamination [15]

3. If warranted, Restrict number of branch offices [24]

4. If warranted, Suspension of 30 days or more [7]

5. If warranted, Monitoring [20]

6. If warranted, Restrict practice [22]

Deceptive Advertising (B&P Code sec 651; 651.3; 3099; 3104; 3129; 3130; 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14] 2. Reexamination [15]

2. Re-examination [15]

3. If warranted, Suspension of 30 days or more [7]

4. If warranted, Submit advertisements for prior approval [25]

5. If warranted, Community service [13]

Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]

2. Re-examination [15]

3. If warranted, Suspension of 30 days or more [7]

4. If warranted, Submit advertisements for prior approval [25]

5. If warranted, Community service [13]

Holding Out Without Certificate (B&P Code sec. 3128)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]

Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)

Minimum Penalty: 30 days stayed, suspension, and at least one-year probation Maximum Penalty: 6-month suspension. Revocation for successive violation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]

Unlawful Solicitation 0 3096

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Unlawful Referrals (B&P Code sec. 650)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Employment of Cappers or Steerers (B&P Code sec. 3100)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. Education course [14]
2. Re-examination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

Terms and conditions depend on the nature of the criminal conviction

1. If warranted, Education course [14]
2. If warranted, Reexamination [15]
3. If warranted, Suspension of 30 days or more [7]
4. If warranted, Community service [13]
5. If warranted. Monitoring [20]

6. If warranted, Restrict practice [22]
7. If drug related and warranted (see conditions for drug abuse)
8. If related to sexual misconduct and warranted (see conditions for sexual misconduct)

Procuring a License by Fraud (B&P Code sec. 123; 496; 3095; 3126)

Denial or Revocation

Fictitious Name Violation (B&P Code sec. 3125; Title 16 CCR sec. 1513; 1518)

Minimum Penalty: 30 days stayed. Suspension, and at least one-year probation on the standard conditions

Maximum Penalty: 6-month suspension. Revocation for successive violation.

Violation of Probation

Minimum Penalty: Impose an actual period of suspension

Maximum Penalty: Impose penalty that was stayed.

The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164;

3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

Minimum Penalty: Stayed Revocation, at least 3 years probation Maximum Penalty: Revocation

1. If warranted. Education course for corporate principals involved [14]
2. If warranted. Reexamination for corporate principals involved [15]
3. If warranted, Suspension of 30 days or more for corporate license and the license of any corporate principal involved [7]
4. If warranted, Community service for corporate principals [13]
5. If warranted, Monitoring [20]
6. If warranted, Restrict practice [22]

MODEL DISCIPLINARY ORDERS

MODEL NUMBERS

1. Revocation-Single Cause

Certificate No. (Ex.: 12345) issued to respondent (Ex: John Smith. O.D.) is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (Ex: II. and III) separately and for all of them.

3. Suspension - Single Cause

Certificate No. _____ issued to respondent _____ is suspended for a period of (Ex: 30-days/one year).

4. Suspension - Multiple Causes (run concurrently)

Certificate No. ____ issued to respondent _____ is suspended pursuant to Determination of Issues _____, separately and for all of them. All suspensions shall run concurrently.

5. Suspension - Multiple Causes (run consecutively)

Certificate No. ____ issued to respondent _____ is suspended (Ex: 30 days) pursuant to Determination of Issues _____. These suspensions shall run consecutively, for a total period of (Ex: 90-days).

6. Standard Stav Order

However (revocation/suspension) is stayed and respondent is placed on probation for (Ex: three) years upon the following terms and conditions:

7. Actual Suspension

As part of probation, respondent is suspended from the practice of optometry for (Ex: 90 days) beginning the effective date of this decision.

8. Drugs & Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription.

NOTE: Also use Condition No.9 which exempts "use or possession" for personal illness.

9. Drugs - Exception for Personal Illness

Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a licensed physician.

NOTE: Add this exception whenever Condition 8 is used.

10. Lens Prescriptions - Maintain Records

Respondent shall maintain a record of all lens prescriptions dispensed or administered by respondent during probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

11. Alcohol -Abstain From Use

Respondent shall abstain completely from the use of alcoholic beverages.

12. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the board or its designee.

13. Community Services - Free Services

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval a community service program in which respondent shall provide free non-optometric services on a regular basis to a community or charitable facility or agency for at least (Ex: 20) hours a month for the first (Ex: 24) months of probation.

14. Education Course

Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Optometric Education requirements for re-licensure, and shall be obtained with all

costs being paid by respondent. Following the completion of each course, the board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses as are approved by the board.

15. Re-examination

Within 60 days of the effective date of this decision, or within some other time as prescribed in writing by the board, respondent shall take and pass an oral or written exam, in a subject to be designated and administered by the board or its designee. If respondent fails this examination, respondent must take and pass a re-examination as approved by the board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. The respondent shall pay the cost of any such examination.

(Continue with either one of these two options.)

(OPTION #1: Condition Subsequent)

If respondent fails the first examination, respondent shall cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to respondent from the board. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

(OPTION #2: Condition Precedent)

Respondent shall not practice optometry until respondent has passed the required examination and has been so notified by the board in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

NOTE: The condition precedent option is particularly recommended in cases where respondent has been found to be grossly negligent or inefficient.

16. Psychiatric or Psychological Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a psychiatric or psychological evaluation (and psychological testing, if deemed necessary) by a board-appointed psychiatrist or psychologist, at respondent's cost, who shall furnish a psychiatric or psychological report to the board or its designee.

If respondent is required by the board or its designee to undergo psychiatric or psychological treatment, respondent shall within 30 days of the requirement notice

submit to the board for its prior approval the name and qualifications of a psychiatrist or psychologist of respondent's choice. Upon approval of the treating psychiatrist or psychologist, respondent shall undergo and continue psychiatric or psychological treatment, at respondent's cost, until further notice from the board. Respondent shall have the treating psychiatrist or psychologist submit quarterly status reports to the board.

(OPTIONAL)

Respondent shall not engage in the practice of optometry until notified by the board of its determination that respondent is mentally fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.

17. Psychotherapy

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until the board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the board. The board may require respondent to undergo psychiatric or psychological evaluations by a board-appointed psychiatrist or psychologist.

NOTE: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and drug abuse) relate to the violations but is not at present a danger to patients.

18. Medical Evaluation

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a medical evaluation, at respondent's cost, by a board-appointed physician who shall furnish a medical report to the board or its designee.

If respondent is required by the board or its designee to undergo medical treatment, respondent shall within 30 days of the requirement notice submit to the board for its prior approval the name and qualification of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment, at respondent's cost, until further notice from the board. Respondent shall have the treating physician submit quarterly reports to the board.

(OPTIONAL)

Respondent shall not engage in the practice of optometry until notified by the board of its determination that respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

19. Medical Treatment

Within 60 days of the effective date of this decision, respondent shall submit to the board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, respondent shall undergo and continue treatment, at respondent's cost, until the board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the board. The board may require respondent to undergo periodic medical evaluations by a board-appointed physician.

NOTE: This condition is for those cases where there is evidence that medical illness or disability was a contributing cause of the violations but the respondent is not at present a danger to his patients.

20. Monitoring

Within 30 days of the effective date of this decision, respondent shall submit to the board for its prior approval a plan of practice in which respondent's practice shall be monitored by another optometrist, who shall provide periodic reports to the board. Any cost for such monitoring shall be paid by respondent.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the board.

(OPTIONAL)

Respondent is prohibited from engaging in solo practice.

21. Third Party Presence. Sexual Transgressions

During probation, respondent shall have a third party present while examining or treating female/male/minor/patients. The third party individual or individuals authorized for this purpose may be subject to approval by the board or its designee. Any costs incurred for compliance with this term shall be paid by the respondent.

NOTE: Sexual transgressors should normally be placed in a monitoring environment.

22. Restricted Practice -Incompetence

During probation, respondent is prohibited from practicing Ex. specified optometric procedures).

23. Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment

Within 15 days of the effective date of this decision, respondent shall submit the name, business address and business telephone number of three persons who are professionally qualified to provide counseling and treatment for drug, alcohol or other chemical abuse appropriate to the case. Thereafter the board through its staff shall select one of these persons to provide the necessary counseling and treatment. Within 30 days of written notification of this selection to the respondent the respondent shall, in consultation with this counselor and treating professional, prepare and submit to the board for its approval, a counseling and treatment program all costs of which shall be paid by the respondent. Respondent shall successfully complete this counseling and treatment program as a condition of probation.

24. Restriction as to Branch Offices

During the period of probation, the respondent shall be restricted as to the number and location of branch offices that the respondent may operate or in which the respondent may have any proprietary interest as designated and approved in writing by the board.

25. Restriction as to Advertisement

During the period of probation, the respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of optometry to the board for its prior approval. Such advertisement may be published or disseminated to the public only after written approval by the board.

STANDARD CONDITIONS; TO BE INCLUDED IN ALL CASES OF PROBATION

26. Obey all laws

Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

27. Cooperate with probation surveillance

Respondent shall comply with the board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.

28. Tolling of probation if respondent moves out-of-state

The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is

required to immediately notify the board in writing of the date of departure, and the date of return, if any.

29. Completion of probation

Upon successful completion of probation, respondent's certificate will be fully restored.

30. Violation of probation

If respondent violates probation in any respect, the board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.